

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

MDL No. 15-2666 (JNE/FLN)

In re Bair Hugger Forced Air Warming
Products Liability Litigation

This Document Relates to All Actions

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR LEAVE TO
AMEND MASTER LONG FORM AND
SHORT FORM COMPLAINTS TO
ADD CLAIM FOR PUNITIVE
DAMAGES**

PLEASE TAKE NOTICE that the undersigned will bring Plaintiffs Motion for Leave to Amend the Master Long Form and Master Short Form Complaints, pursuant to Federal Rule 15(a)(2), for hearing before the Honorable Franklin L. Noel, of the above-named court, on May 18, 2017 at 9:30 a.m. or as soon thereafter as counsel may be heard.

Through this motion and the accompanying Memorandum of Law and all supporting documents, Plaintiffs offer *prima facie* evidence regarding each of the following deliberate acts:

- Defendants designed and marketed Bair Hugger without performing any safety validation with respect to the known risk of airborne contamination.
- Defendants not only secretly cut the efficiency of Bair Hugger filter without validating the safety of the new filtration level, but they hid this change from the FDA, healthcare providers, and the public.

- Defendants knew the inadequate filter would result in increased particles passing through the filter, causing internal contamination in Bair Hugger units.
- Defendants' product engineers repeatedly developed feasible design changes that would have reduced if not eliminated the risk of internal contamination, but all of these changes were rejected by management.
- Defendants willfully disregarded medical research regarding the potential for the Bair Hugger to harm patients through disruption of the surgical field.
- Defendants were aware of the weaknesses and limitations of the research they used to support Bair Hugger safety but never told the public of the same.
- Defendants engineered and manipulated scientific research to produce commercially favorable results.
- Defendant prevented, discredited, and suppressed scientific inquiry regarding the potential for the Bair Hugger to increase the risk of orthopedic infections.
- Defendants affirmatively misrepresented the safety of the Bair Hugger and failed to warn customers, healthcare providers, and the public of the risks.

Viewed collectively or independently, the Memorandum of Law, all supporting documents, and all of the files, records, and proceedings herein show that Defendants knew the Bair Hugger posed a safety risk to orthopedic patients but deliberately acted with intentional disregard to the high probability of injury to patients. *See* Minn. Stat. § 549.20. Accordingly, Plaintiffs respectfully move this Court for an Order granting their Motion to Amend the Master Long Form and Master Short Form Complaints to assert

claims for punitive damages. A copy of each proposed amended pleading is attached hereto as Exhibit 1 and Exhibit 2, reflecting requested changes in redline form.

Respectfully submitted,

Dated: April 21, 2017

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